

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

CASE NO. 3:17-cv-02278-X

CHARLENE CARTER,

Plaintiff,

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SOUTHWEST AIRLINES CO. and
TRANSPORT WORKERS OF AMERICA,
LOCAL 566,

Defendants.

TRANSCRIPT OF THE TRIAL

BEFORE THE HONORABLE ED KINKEADE

UNITED STATES DISTRICT JUDGE

VOLUME 8

Dallas, Texas

July 14, 2022

10:00 a.m.

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1 COURT REPORTER: MS. KELLI ANN WILLIS, RPR, CRR, CSR
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8 Proceedings reported by mechanical
9 stenography and transcript produced by computer.
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I N D E X

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3 Jury Note No. 5 2211

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5 Verdict 2217

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1 - E R O U E E P H G N M

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3 THE COURT: In the case of Charlene --
4 Charlene Carter versus Transportation Workers Union
5 Local 566, Case No. 3:17-cv-2278-X, we have gotten
6 Jury Note No. 5, and there were two questions.

7 You have those and you have my proposed
8 answer, and I'm going to attach these into the
9 record.

10 Any objection to my answer?

11 Do you want to start, Mr. Greenfield?

12 MR. GREENFIELD: Yes, your Honor.

13 | On Question No. 2, awarding --

14 THE COURT: No objection to 1?

15 MR. MCKEEBY: I'm fine --

16 MR. GREENFIELD: I'm sorry.

17 Go ahead, Mr. McKeeby.

18 MR. MCKEEBY: It is not our question, I

19 guess, but I think it should say "may support."

20 THE COURT: Wait. Let me do it one at a
21 time, just like Satchmo Armstrong. I don't want you
22 to do a duet.

23 What is it? You can make your objection.

24 You are representing Southwest?

25 MR. MCKEEBY: Yes, sir.

1 THE COURT: He's representing the Union,
2 right?

3 You can collaborate, if you want to.

4 MR. MCKEEBY: We never do that.

5 THE COURT: Okay.

6 MR. MCKEEBY: You wouldn't ask that, if
7 you had presided over this case.

8 THE COURT: Oh, okay. I don't really
9 care.

10 MR. GREENFIELD: Yes, your Honor.

11 We think technical violation that may
12 support, just the word "may" included in between
13 "that" and "support," is our only issue with
14 Question No. 1.

15 THE COURT: What now? What are you the
16 words you want me to put down?

17 MR. GREENFIELD: "A technical violation
18 that may support the nominal damages."

19 THE COURT: What was in the charge?

20 MR. MORRIS: I'm pulling it up.

21 THE COURT: Oh, you are looking.

22 MR. GREENFIELD: And Ms. Silver has it.

23 THE COURT: It is like War and Peace.

24 MR. GREENFIELD: The charge itself says,
25 "If Plaintiff Carter has suffered no damages as a

1 result of these violations, then you may award
2 Plaintiff Carter nominal damages."

3 THE COURT: Nominal damages.

4 All right. Well, I am going to put it
5 exactly the way it is in the charge.

6 MR. GREENFIELD: No objection.

7 MR. MCKEEBY: I'm not sure if we know --
8 do you want me to show you where? I didn't pull
9 that out.

10 MR. GILLIAM: It is just going to
11 reiterate the charge on nominal damages?

12 THE COURT: Exactly.

13 MR. GILLIAM: Okay.

14 THE COURT: We are going to have the
15 revised standard position.

16 MR. GILLIAM: Okay.

17 We thought your answer was great, your
18 Honor, but the charge -- the charge is --

19 THE COURT: You will make that change
20 right now?

21 Okay. Good. That will do that.

22 Any other objections by y'all?

23 Now that I am here, you won't object to
24 the other way?

25 MR. GILLIAM: I think we -- yes, I think

1 we object and would prefer the language that you
2 proposed first.

3 THE COURT: The original. You want the
4 original language. I'm overruling your objection.
5 I'm sustaining your objection and putting in this.

6 MR. GREENFIELD: And then also we object
7 to the Question No. 2, we think that should be a
8 yes, instead of a no, based on -- based on the jury
9 instruction.

10 THE COURT: No. 2 should be a yes?

11 MR. GREENFIELD: Yes. It is asking,
12 awarding money in questions 14 and 16, does that
13 exclude awarding money in question 22?

14 And the way I read the second paragraph on
15 nominal damages, it says that if you -- it can only
16 be awarded if Plaintiff Carter has suffered no
17 damages as a result of the violation, then you can
18 award nominal damages.

19 In that paragraph, it discusses technical
20 violations of the Railway Labor Act and Title VII or
21 the DFR claims, potentially.

22 MR. GILLIAM: We believe the answer should
23 be yes.

24 THE COURT: Do you?

25 MR. McKEEBY: Because it could relate

1 to -- because there are separate claims, right? So
2 we amend our objection.

3 THE COURT: The other Railway labor Act,
4 right? Isn't that right?

5 MS. SILVER: Title VII. Title VII.

6 THE COURT: The way they asked it is yes
7 under one and no under the other one.

8 Why don't we say that? Would that confuse
9 it even more?

10 Yes, why don't we do that? No, because
11 the question are about different laws.

12 MR. GREENFIELD: That is fair.

13 MR. GILLIAM: Well, your Honor, if actual
14 damages are proved and awarded in 14 and 16, then we
15 think that there wouldn't be any nominal because
16 nominal damages only arise when there is a technical
17 violation but no other damages proven.

18 MR. MCKEEBY: Claims.

19 THE COURT: Oh, okay.

20 Oh, 14 and 16.

21 MS. SILVER: It is about Title VII. That
22 is a clue as to how --

23 THE COURT: No, it doesn't. Okay.

24 I will overrule your objection.

25 MR. GREENFIELD: Okay. And I will

1 withdraw it as well. I understand now. I was
2 mixing up the statutes myself.

3 THE COURT: We are going to get another
4 question.

5 MR. GILLIAM: I apologize for that. Yes,
6 we agreed with your original.

7 THE COURT: You agreed with me?

8 MR. GILLIAM: Yes, your Honor.

9 THE COURT: We need to get that on the
10 record.

11 MR. GILLIAM: I think she caught it.

12 (Discussion off the record.)

13 THE COURT: Any objection?

14 MR. GILLIAM: No objections, your Honor.

15 MR. MCKEEBY: No objection from Southwest.

16 MR. GREENFIELD: No objection, your Honor.

17 THE COURT: That means the Court got it
18 right.

19 (Recess.)

20 THE COURT SECURITY OFFICER: All rise.

21 THE COURT: Okay. Let's bring the jury
22 in.

23 What is the foreperson's name? Sidney?

24 Is that a man or a woman?

25 (The jurors entered the courtroom.)

1 THE COURT: Good to see you. Y'all be
2 seated.

3 I'm a substitute judge. Who is that guy?

4 Judge Starr had to be out of town. He had
5 an important opportunity he's working on, where he
6 had been asked to do a long time ago, or he would
7 have been here.

8 But have you reached a verdict, Mr. Red?

9 JUROR NO. 1: Yes.

10 THE COURT: Would you give that to the
11 CSO? And I will go over that one you.

12 I'm not going to go back over the
13 instructions but I am going to go through the
14 answers to the question, okay?

15 Then I'm going to ask you at the end of
16 this, is this your verdict of each and every one of
17 you. So make sure, if there is something wrong, you
18 let me know, okay.

19 By the way, I'm Judge Kinkeade. I'm an
20 old, old judge. And I have been here forever, since
21 I was tall and thin.

22 Question No. 1.

23 Has Plaintiff Carter proved that Audrey
24 Stone was acting in her official capacity as then
25 president of Local 556 when she reported Plaintiff

1 Carter to Defendant Southwest?

2 Yes or no.

3 The answer, yes.

4 Question No. 2.

5 Did Plaintiff Carter prove that the
6 Defendant Local 556 violated the duty of fair
7 representation owed to Plaintiff Carter?

8 Answer yes or no.

9 Answer, yes.

10 Question 3.

11 Did Plaintiff Carter prove that Defendant
12 Local 556 retaliated against Plaintiff Carter for
13 engaging in activity protected by the Railway Labor
14 Act?

15 Answer yes or no.

16 Answer, yes.

17 Question 4.

18 Do you find that Defendant Local 556 has
19 proved of Local 556 would have reported Plaintiff
20 Carter to Defendant Southwest, even if Plaintiff
21 Carter had not engaged in activity protected by the
22 Railway Labor Act?

23 Answer yes or no.

24 And you answered no.

25 Question 5.

1 Has Plaintiff Carter proved that Defendant
2 Local 556 unlawfully discriminated against Plaintiff
3 Carter by causing or attempting to cause her
4 discharge and that such cause or attempt was
5 motivated by Plaintiff Carter's sincerely-held
6 religious observances, beliefs, or practices?

7 Answer yes or no.

8 The answer is yes.

9 Question 6.

10 Did Plaintiff Carter prove that Defendant
11 Local 556 unlawfully discriminated against Plaintiff
12 Carter by treating her less favorably than other
13 employees and that such treatment was motivated by
14 Plaintiff Carter's sincerely-held religious
15 observances, beliefs, or practices?

16 Answer yes or no.

17 The answer is yes.

18 Question 7.

19 Did Plaintiff Carter prove that Defendant
20 Local 556 unlawfully failed to accommodate Plaintiff
21 Carter's sincerely-held religious beliefs,
22 practices, or observances?

23 Answer yes or no.

24 And the answer is yes.

25 Now we will go to Southwest on the

1 liability questions.

2 Question 8.

3 Did Plaintiff Carter prove that Defendant
4 Southwest retaliated against Plaintiff Carter for
5 engaging in activity protected by the Railway Labor
6 Act?

7 Answer yes or no.

8 And the answer is yes.

9 Question 9.

10 Do you find that Defendant Southwest has
11 proved -- that Southwest would have discharged
12 Plaintiff Carter -- I'm not sure how this is
13 worded -- anyway, would have discharged Plaintiff
14 Carter, do you find that Southwest would have
15 discharged Plaintiff Carter even if she had not
16 engaged in activity protected by the Railway Labor
17 Act? Whether Southwest proved that.

18 The answer is no.

19 And the next question.

20 Has Plaintiff Carter proved that Defendant
21 Southwest unlawfully discriminated against Plaintiff
22 Carter by discharging her -- discharging her --
23 excuse me -- and that such discharge was motivated
24 by Plaintiff Carter's sincerely-held religious
25 observances, beliefs, or practices?

1 Answer yes or no.

2 The answer is yes.

3 Question 11.

4 Has Plaintiff Carter proved that Defendant
5 Southwest failed to accommodate Plaintiff Carter's
6 sincerely-held religious beliefs, practices, or
7 observances?

8 Answer yes or no.

9 The answer is yes.

10 Question 12.

11 Do you find that Defendant Southwest has
12 proved that any and all accommodations in this case
13 would have imposed an undue hardship on Defendant
14 Southwest?

15 The answer is no.

16 Questions about damages.

17 Lost wages and damages against Local 556.

18 These will be a list.

19 What sum of money, if paid now in cash,
20 would fairly and reasonably compensate Plaintiff
21 Carter for lost wages and benefits, if any,
22 Defendant Local 556 caused Plaintiff Carter?

23 Answer in dollars and cents for the
24 following items and none others.

25 Lost wages sustained between March 14th,

1 2017 and date of the jury's decision.

2 \$120,000.

3 Two. Lost benefits sustained between
4 March 14, 2017 and the date of the jury's decision.

5 Answer, \$30,000.

6 Question 14.

7 Non-economic damages against Local 556 for
8 Title VII claims.

9 What sum of money, if paid now in cash,
10 would fairly and reasonably compensate Plaintiff
11 Carter for her emotional distress, pain and
12 suffering, inconvenience, mental anguish and the
13 loss of enjoyment of life that Defendant Local 556
14 caused Plaintiff Carter?

15 Answer in dollars and cents for the
16 following items and none others.

17 Past pain and suffering, inconvenience,
18 mental anguish, and loss of the enjoyment of life.

19 \$250,000.

20 Two. Future pain and suffering
21 inconvenience, mental anguish, and loss of enjoyment
22 of life.

23 \$250,000.

24 Question 15.

25 Punitive damages against Local 556 for

1 **Title VII claims.**

2 Do you find that Plaintiff Carter should
3 be awarded punitive damages against Defendant Local
4 556 for violating Plaintiff Carter's religious
5 rights under Title VII?

6 Answer, yes.

7 16.

8 Punitive damages against Local 556 for
9 Title VII claims.

10 What sum of money should be assessed
11 against Defendant Local 556 as punitive damages
12 against Local 556 for violating Plaintiff Carter's
13 religious rights under Title VII?

14 Answer in dollars and cents.

15 \$300,000.

16 Question 17.

17 Nominal damages against Local 556 for
18 Title VII claims.

19 Do you find that Plaintiff Carter should
20 be awarded nominal damages against Local 556 for
21 violating Plaintiff Carter's religious rights under
22 Title VII?

23 Answer, no.

24 Question 18.

25 Nominal damages against Local 556 for

1 **Title VII claims.**

2 What sum of money should be assessed
3 against Defendant Local 556 as nominal damages
4 against Local 556 for violating Plaintiff Carter's
5 religious rights under Title VII.

6 And it said to answer in dollars and
7 cents, and y'all put "N/A," meaning not applicable.

8 Oh, you skipped Question 19. You did the
9 right thing. You followed the instructions. Thank
10 you very much.

11 So question 19.

12 Nominal damages against Local 556 for duty
13 of fair representation claim.

14 Do you find that Plaintiff Carter should
15 be awarded nominal damages against the Defendant
16 Local 556 for violating its duty of fair
17 representation owed to Plaintiff Carter?

18 Answer, no.

19 Question 20 -- well, it is one of those
20 that is skipped.

21 Number 20. Because you answered no to 19,
22 then you skip to 21.

23 Nominal damages against for Railway Act --
24 against Local 556 for Railway Labor Act retaliation
25 claim.

1 Do you find that Plaintiff Carter should
2 be awarded nominal damages against Defendant Local
3 556 for retaliating against Plaintiff Carter for
4 exercising her rights under the Railway Labor Act?

5 The answer is no.

6 Question 22, again, is skipped.

7 I don't think they said no to 21. Yes.

8 Okay. Yes. So skip to 23.

9 Front pay damages against Local 556,
10 Question 23.

11 What sum of money, if paid now in cash,
12 would fairly and reasonably compensate Plaintiff
13 Carter for future lost wages, if any, Defendant
14 Local 556 caused Plaintiff Carter?

15 Answer in dollars and cents.

16 \$200,000.

17 Southwest damages questions.

18 Question 24.

19 Lost wages damages against Southwest.

20 What sum of money, if paid now in cash,
21 would fairly and reasonably compensate Plaintiff
22 Carter for lost wages and benefits, if any,
23 Defendant Southwest caused Plaintiff Carter?

24 Answer in dollars and cents for the
25 following items and none other.

1 One. Lost wages sustained between March
2 14th, 2017 and the date of the jury's decision.

3 Answer, \$120,000.

4 Lost benefits sustained between March
5 14th, 2017 and the date of jury's decision.

6 \$30,000.

7 Question 25.

8 Non-economic damages against Southwest for
9 Title VII claims.

10 What sum of money, if paid now in cash,
11 would fairly and reasonably compensate Plaintiff
12 Carter for emotional distress, pain and suffering,
13 inconvenience, mental anguish, and loss of enjoyment
14 of life that Defendant Southwest caused Plaintiff
15 Carter?

16 Answer in dollars and cents for the
17 following items and none other.

18 Past pain and suffering, inconvenience,
19 mental anguish and loss of enjoyment of life?

20 \$250,000.

21 Future pain and suffering, inconvenience,
22 mental anguish, and the loss of enjoyment of life.

23 \$250,000.

24 Question 26.

25 Punitive damages against Southwest for

1 Title VII claims.

2 Do you find that Plaintiff Carter should
3 be awarded punitive damages against Defendant
4 Southwest for violating Plaintiff Carter's religious
5 rights under Title VII?

6 Answer yes or no.

7 The answer is yes.

8 27.

9 Punitive damages against Southwest for
10 Title VII claims.

11 What sum of money should be assessed
12 against Defendant Southwest as punitive damages
13 against Southwest for violating Plaintiff Carter's
14 religious rights under Title VII?

15 Answer in dollars and cents.

16 \$3,500,000.

17 Question 28.

18 Nominal damages against Southwest for
19 Title VII claims.

20 Do you find that Plaintiff Carter should
21 be awarded nominal damages against Defendant
22 Southwest for violating Plaintiff Carter's religious
23 rights under Title VII?

24 The answer is no.

25 Skip to 29.

1 Do you find Plaintiff Carter should be
2 awarded nominal damages against Defendant Southwest
3 for retaliating against Plaintiff Carter for engaging
4 in activity protected by the Railway Labor Act?

5 The answer is no.

6 Skip 31, go to 32.

7 Front pay damages against Southwest.

8 What sum of money, if paid now in cash,
9 would fairly and reasonably compensate Plaintiff
10 Carter for future damages, if any, Defendant
11 Southwest caused Plaintiff Carter?

12 Answer in dollars and cents.

13 \$200,000.

14 Mitigation questions.

15 Do you find that Plaintiff Carter failed
16 to reduce her damages through the exercise of
17 reasonable diligence in seeking, obtaining, and
18 maintaining substantially equivalent employment
19 after the date of her employment termination by the
20 Defendant Southwest?

21 Answer, no.

22 How much would Plaintiff Carter earn had
23 she exercised reasonable diligence to minimize her
24 damages?

25 Answer in dollars and cents.

1 And it is zero.

2 All signed by Sidney Red, Jury Foreperson,
3 and dated today, July 14th, 2022.

4 Juror No. 1, is that your verdict?

5 JUROR NO. 1: Yes.

6 THE COURT: Juror No. 2?

7 JUROR NO. 2: Yes, sir.

8 THE COURT: Juror No. 3?

9 JUROR NO. 3: Yes, sir.

10 THE COURT: Juror No. 4?

11 JUROR NO. 4: Yes, sir.

12 THE COURT: Juror No. 5?

13 JUROR NO. 5: Yes. Yes, sir.

14 THE COURT: Juror No. 6?

15 JUROR NO. 6: Yes, sir.

16 THE COURT: Juror No. 7?

17 JUROR NO. 7: Yes, sir.

18 THE COURT: Okay.

19 I accept your verdict. And we thank you
20 for your service. I think y'all have been down here
21 a week and a half. I appreciate that very much. I
22 know you took out of your lives to do this.

23 And it is still hot outside, I will tell
24 you that.

25 Serving on a jury -- I'm not going to

1 preach to you -- is a difficult and important thing
2 and it is something that I hope was a good
3 experience for you.

4 These are good lawyers, an important case.
5 The judge is a great guy, and I know you enjoyed
6 being with him. And so you are discharged. And I
7 think we give like \$40 bucks a day or something
8 like, not a lot.

9 So we are one of the last free world
10 countries that still has jury trials in civil cases.
11 It is very unusual.

12 And I wanted y'all to know that it is an
13 important part of our freedom. And I don't mean to
14 be standing here waving the flag; it is just an
15 important thing and y'all have done it.

16 So I never been on a jury. I kind of wish
17 I could once, but all right. Y'all are discharged.

18 MR. PRYOR: Your Honor, I'm sorry. Before
19 the jury is discharged, could I approach?

20 THE COURT: I don't think so.

21 MR. PRYOR: Okay.

22 THE COURT: Is there something you want to
23 ask them?

24 MR. PRYOR: Yes, your Honor.

25 THE COURT: Okay. You can come around

1 this way.

2 All right. I will let you do it.

3 Briefly.

4 MR. PRYOR: Yes, sir.

5 (Thereupon, the following proceedings were
6 had at sidebar:)

7 THE COURT: Yes.

8 MR. PRYOR: Your Honor, I'm not sure.

9 Judge Starr, before he left, said two things about
10 before the jury is discharged. One is, he, as I
11 understood it, was going to direct us not to contact
12 them, but he specifically was going to tell them, if
13 he wanted to contact us, they could.

14 I think that is important.

15 THE COURT: I will tell them to call here,
16 and I will leave it so that Judge Starr can handle
17 it. How is that?

18 MR. PRYOR: Sure.

19 Thank you, your Honor.

20 THE COURT: Okay.

21 MR. PRYOR: I'm sorry to interrupt you.

22 THE COURT: Don't do it again.

23 (Thereupon, the sidebar was concluded and
24 the following proceedings were held in open
25 court:)

1 THE COURT: Generally, I don't let jurors
2 talk to the lawyers. It is up to the individual
3 judges to do that.

4 Judge Starr is a young, more cutting-edge
5 judge than I am, probably. If you decide you want
6 to talk to the lawyers, it is up to him. I will let
7 him be the judge of that.

8 And y'all can call up here, and if you
9 want to, set up that time to do that. But they
10 won't call you. The lawyers from either side are
11 instructed not to call you on their own.

12 So if you decide you'd like to do that,
13 in fact, usually I go in with jurors and answer
14 their questions. I don't know how to answer your
15 questions; I wasn't here. So I apologize. I don't
16 have the kind of benefit from that.

17 And so I hope you had a good experience.
18 And if you decide you want to do that, you can get
19 the phone number for the court here and make that
20 kind of contact, okay?

21 Any questions about that?

22 All right. Y'all leave through the jury
23 room. Thank y'all very much.

24 I do accept your verdict and you are
25 discharged.

1 (The jurors exited the courtroom.)

2 THE COURT: I will assume y'all are going
3 to file some kind of an appeal. I will be shocked,
4 if you don't. So you know what your time frame is
5 on all of that; don't miss those dates.

6 MR. MCKEEBY: It is based on the judgment.

7 THE COURT: I'm sorry?

8 MR. MCKEEBY: It is based on entry of the
9 judgment.

10 THE COURT: That's right.

11 MR. MCKEEBY: That will spell that out.

12 THE COURT: Y'all just start working on
13 all of that, and let Judge Starr know and he will
14 work with you guys on that, okay?

15 Okay? Yes?

16 MR. GREENFIELD: Yes, sir. Yes, your
17 Honor.

18 THE COURT: And do y'all have anything
19 else you want?

20 MR. PRYOR: Nothing, your Honor.

21 THE COURT: I didn't think you would.

22 All right. Thank you y'all very much.

23 MR. PRYOR: Thank you.

24 (Proceedings concluded at 4:40 p.m.)

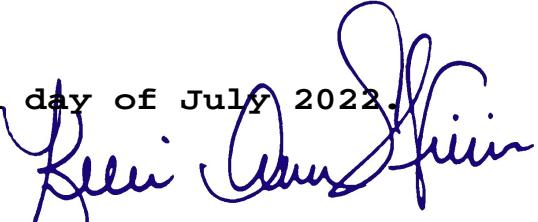
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1 C E R T I F I C A T E
2

3 I, Kelli Ann Willis, RPR, CRR, CSR
4 certify that the foregoing is a transcript from the
5 record of the proceedings in the foregoing entitled
6 matter.

7 I further certify that the transcript
8 fees format comply with those prescribed by the
9 Court and the Judicial Conference of the United
10 States.

11 This 14th day of July 2022.

12 
13 s/ Kelli Ann Willis
14 Official Court Reporters
15 Northern District of Texas
16 Dallas Division

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